

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the Matter of:	)	
	)	
The University of Massachusetts	)	
System	)	
40 Campus Center Way	)	<b>TSCA-01-2012-0036</b>
Amherst, Massachusetts 01003-9244	)	
	)	<b>CONSENT AGREEMENT</b>
	)	<b>AND FINAL ORDER</b>
Respondent.	)	
	)	
Proceeding under Section 16(a)	)	
of the Toxic Substances Control	)	
Act, 15 U.S.C. § 2615(a)	)	
	)	

**I. PRELIMINARY STATEMENT**

1. Complainant, United States Environmental Protection Agency ("EPA"), Region 1, alleges that Respondent, the University of Massachusetts System ("UMASS"), violated Section 15 of the Toxic Substance Control Act ("TSCA"), 15 U.S.C. § 2614, and the federal regulations entitled, "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce and Use Prohibitions" (the "PCB Regulations"), 40 C.F.R. Part 761. The violations concern Respondent's recent discovery that window glazing compound in a UMASS building in Amherst, MA, contains PCBs.

2. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order ("CAFO") without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment

of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

3. Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of Complainant and Respondent, it is hereby ordered and adjudged as follows:

## **II. TSCA STATUTORY AND REGULATORY AUTHORITY**

4. Section 6(e)(2) of TSCA, 15 U.S.C. § 2605(e)(2), prohibits the manufacture, processing, distribution in commerce, or use of any polychlorinated biphenyl in any manner other than in a totally enclosed manner except as authorized by EPA.

5. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of civil penalties for violations of Section 15 of TSCA, 15 U.S.C. § 2614. Sections 15(1)(B) and (C) of TSCA, 15 U.S.C. §§ 2614(1)(B) and (C), make it unlawful for any person to fail to comply with any requirement prescribed by Section 6 of TSCA, 15 U.S.C. § 2605, or any rule promulgated under that section.

6. The PCB Regulations, 40 C.F.R. Part 761, were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

7. The PCB Regulations establish "prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items." See 40 C.F.R. § 761.1(a).

8. The PCB Regulations define "PCB" as "any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance." See 40 C.F.R. § 761.3.

9. The PCB Regulations define "excluded PCB products" in part as "materials which appear at concentrations less than 50 parts per million ("ppm"), including but not limited to: products contaminated with Aroclor or other PCB materials from historic PCB uses." See 40 C.F.R. § 761.3.

10. Forty C.F.R. § 761.20(a) establishes that "no persons may use any PCB, or any PCB Item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under § 761.30, except that: (1) an authorization is not required to use those PCBs or PCB Items which consist of excluded PCB products as defined in § 761.3."

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11. Respondent is a five-campus public university system operated by the Board of Trustees of the University of Massachusetts pursuant to Section 1 of chapter 75 of the Massachusetts General Laws.

12. Respondent operates the Lederle Graduate Research Center (LGRC) located at 710-740 North Pleasant Street in Amherst, Massachusetts. The scope of this CAFO is LGRC Tower A ("LGRC A") and the LGRC Low-rise located at 740 North Pleasant Street in Amherst, Massachusetts. LGRC A and the LGRC Low-rise are collectively referred to as "the Facility."



13. Respondent is a "person," as that term is defined at 40 C.F.R. § 761.3, and is subject to the prohibitions set forth in TSCA and the PCB Regulations.

14. In March of 2009, a consultant for UMASS performed an environmental site assessment at the LGRC Low-rise in preparation for an electrical upgrade project. As part of the assessment, the consultant collected and analyzed two samples of window glazing compound for PCBs. The analysis revealed that the window glazing compound was contaminated with PCBs at a concentration of 50 parts per million ("ppm") or greater. Subsequent sampling revealed PCB concentrations ranging from 82.2 to 14,000 ppm in window glazing compound found on various types of windows in the LGRC Low-rise and LGRC A. Also, during building inspections, a black glazing sealant was found on some windows on the first floor of the LGRC's library and in the walkway. Samples revealed PCB concentrations of 82.2 and 129 ppm. Window glazing compound and sealant contaminated with PCBs at concentrations equal to or greater than 50 ppm is addressed by this CAFO and is hereinafter collectively referred to as "PCB-contaminated window glazing compound" or "window glazing sealant." Based on this sampling, PCB-contaminated window glazing compound may be present in many window units at the Facility.

15. As noted above, pursuant to 40 C.F.R. § 761.20(a), no person may use any PCB or PCB Item regardless of concentration in any manner other than in a totally enclosed manner within the United States unless authorized under 40 C.F.R. § 761.30 or unless the PCB or PCB Item is excluded from regulation under 40 C.F.R. §§ 761.20(a)(1)-(4).

16. The continued use of the PCB-contaminated window glazing compound is not authorized under any provision of 40 C.F.R. §§ 761.20(a)(1)-(4).

17. The continued use of the PCB-contaminated window glazing compound is not authorized under any provision of 40 C.F.R. § 761.30.

18. Accordingly, based on the unauthorized use of PCB-contaminated window glazing compound, Respondent violated 40 C.F.R. § 761.20(a) and Sections 6 and 15 of TSCA.

19. In September of 2009, EPA published a series of guidance materials pertaining to management of PCB-contaminated caulk throughout the nation's buildings. The guidance materials explain the current state of knowledge regarding PCB-contaminated caulk and set forth best management practices for addressing PCB-contaminated caulk. Complainant has determined that some of the same types of best management practices could apply to PCB-contaminated window glazing compound at the Facility, as interim measures, until Respondent removes the glazing.

20. On July 31, 2009, Respondent submitted an Interim Measure Plan to Complainant to address the PCB-contaminated window glazing compound at the Facility. Based on Complainant's comments, Respondent submitted a revised plan (hereinafter called the "PCB Interim Measures Plan"), which is attached to this CAFO as Attachment 1. If Respondent implements the PCB Interim Measures Plan as described, Complainant deems that there will be no unreasonable risk of PCB exposure to human health or the environment.

21. Under this PCB Interim Measures Plan, Respondent shall:

(a) vacuum and cleanse window units and surrounding surfaces, using a HEPA vacuum and a standard industrial cleaning fluid, and treat all cleaning material and vacuum debris as PCB wastes (Section 4.2);

(b) encapsulate the PCB-contaminated window glazing compound by applying an

overlying barrier system to it (currently envisioned to include aluminum foil tape and silicone caulking) (Section 4.3);

(c) conduct visual inspections and wipe sampling to confirm the effectiveness of the encapsulation and establish the baseline for long-term monitoring (Section 4.4);

(d) record a deed notice (Section 4.6);

(e) perform annual long-term monitoring of the windows, which will include visual inspections, collecting wipe samples from window ledges and encapsulated surfaces, and collecting air monitoring samples (Sections 5.1 and 5.2);

(f) take corrective measures at least annually to address any PCBs that exceed levels prescribed in the PCB Interim Measures Plan (Section 5.3);

(g) provide general awareness training to staff (Section 5.5);

(h) submit an annual report to EPA and post the annual report on the UMASS web site (Section 5.6);

(i) remove and replace all windows and PCB-contaminated window glazing compound, within 15 years of the effective date of this CAFO as portions of the Facility are renovated, starting with the removal of some windows on Floors 3,7, and 8 of the LGRC A by December 31, 2012. Respondent shall treat PCB-contaminated window glazing compound as PCB Bulk Product Waste. The remaining window components (glass, non-porous frames, etc.), will either be treated as PCB Bulk Product Waste or decontaminated in accordance 40 C.F.R. § 761.79 (Sections 6.1 and 6.2);

(j) Submit to EPA a notice thirty (30) days before commencing any window removal and replacement at the Facility.



#### **IV. GENERAL TERMS OF SETTLEMENT**

22. The provisions of this CAFO shall apply to and be binding on Respondent and its officers, directors, successors and assigns until Respondent has completed all of the obligations required by this CAFO.

23. Respondent stipulates that Complainant has jurisdiction over the subject matter alleged in this CAFO. For purposes of this CAFO, including any further action to enforce the terms of this CAFO, Respondent waives any defenses it might have as to jurisdiction and venue.

24. Respondent acknowledges that it has been informed of its right to request a hearing in this proceeding and hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in this CAFO.

25. Respondent hereby waives its right to appeal the Final Order accompanying this Consent Agreement.

26. Without admitting or denying the factual findings and allegations in this CAFO, Respondent consents to the terms and issuance of this CAFO.

#### **V. COMPLIANCE WITH REGULATORY REQUIREMENTS**

27. Respondent agrees to comply with the PCB Interim Measures Plan and documents submitted or recorded pursuant to the PCB Interim Measures Plan. A summary of the compliance schedule is contained in Attachment 2. The PCB Interim Measures Plan, any documents submitted or recorded pursuant to the PCB Interim Measures Plan, and any EPA-approved revisions hereto, are incorporated into, and enforceable through, this CAFO.

28. Respondent shall submit to EPA a notice at least thirty (30) days prior to

commencing each window removal.

29. Respondent agrees to properly store and dispose of any PCB-contaminated window glazing compound and any associated PCB waste removed from use at the Facility in accordance with the PCB regulations and applicable local, state, and federal statutes, regulations, and policies, including, but not limited to, 40 C.F.R. §§ 761.61 and 761.62 standards for *PCB bulk product waste* and *PCB remediation wastes*.

30. *Remediation of unanticipated PCB contamination:*

(a) The PCB Interim Measures Plan does not address the remediation of any other PCB non-liquid product (e.g., caulk, paint) or building substrate (e.g., concrete or brick) to which PCBs may have migrated because the parties do not currently anticipate that PCB-contaminated window glazing compound would have contaminated any surfaces other than the window frames and glass. However, if Respondent discovers any other materials to which PCBs have migrated from the PCB-contaminated window glazing compound, or any other PCB non-liquid product, Respondent shall notify EPA within 15 days of discovery.

(b) Within 180 days of discovery, Respondent shall submit to EPA for approval a plan to remediate such contamination if such contamination exceeds regulatory thresholds. Unlike the window glass, non-porous window frames to which PCB-contaminated window glazing compound was applied, and PCB-contaminated window glazing, which are all classified as "PCB Bulk Product Wastes" under this CAFO<sup>1</sup>, contaminated substrate to which PCBs have migrated is categorized as "PCB Remediation Waste."

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<sup>1</sup> Such materials are PCB Bulk Product Wastes unless decontaminated pursuant to 40 C.F.R. § 761.79.



(c) For PCB-contaminated substrate, Respondent may propose, if appropriate, a risk-based disposal plan, pursuant to 40 C.F.R. § 761.61(c), to leave in place the PCB-contaminated substrate until the Facility is demolished, provided that Respondent also includes interim measures to control exposure risks until such time as the Facility is demolished.

## **VI. PENALTY**

31. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and EPA's "Polychlorinated Biphenyls (PCB) Penalty Policy," dated April 9, 1990, Complainant considered the nature, circumstances, extent, and gravity of the alleged violation; Respondent's ability to pay; the effect of the penalty on Respondent's ability to continue its operations; Respondent's history of prior violations; Respondent's degree of culpability; and economic benefit gained; and such other matters as justice requires. After consideration of the foregoing factors, Complainant determined and Respondent agrees that a civil penalty in the amount of \$75,000 is assessed for the TSCA violations alleged herein.

32. Pursuant to 40 C.F.R. § 22.31(c) and pursuant to TSCA Section 16(a)(2)(C), 15 U.S.C. § 2615(a)(2)(C), Respondent and Complainant agree that the payment of the civil penalty by Respondent is deferred and not due and owing until Complainant issues an order requiring payment of the penalty ("Non-remittance Order").

33. Complainant agrees to remit the entire penalty and issue a remittance Order upon Respondent's completion, to Complainant's satisfaction, of the attached PCB Interim Measures Plan and other obligations contained herein.

34. Prior to making a determination that Respondent has failed to implement the PCB Interim Measures Plan, and/or Respondent's other obligations contained herein, Complainant will give Respondent written notice of deficiencies and provide Respondent reasonable time(s) to cure any such deficiencies that can be cured. Such notice is not required before stipulated penalties accrue in accordance with Section IX of the CAFO.

35. If Complainant in its sole discretion determines that Respondent has failed to implement its obligations under this CAFO fully and satisfactorily, Complainant may issue a Non-remittance Order requiring Respondent to pay the civil penalty plus interest accrued from the date of the issuance of the Final Order for this settlement. The Non-remittance Order will set forth the details of the penalty payment procedures and calculations.

## **VII. ACCESS**

36. Respondent shall provide access to the Facility at reasonable times to EPA officials and authorized representatives. Respondent shall also provide access at reasonable times to all records and documentation in Respondent's possession or control, including those records and documents in the possession or control of Respondent's contractors and employees, related to the actions conducted pursuant to this CAFO. Respondent shall use its best efforts to gain access to areas owned by or in the possession of someone other than Respondent, as necessary to implement this CAFO. Such access shall be provided to EPA and its authorized representatives, who shall be permitted to move freely about the buildings and properties and appropriate off-site areas in order to conduct actions that EPA determines to be necessary. Respondent has a right to accompany EPA representatives at all times when such

representatives are on Respondent's property.

37. Any denial of access at reasonable times or to any portion of the Facility shall be construed as a violation of the terms of this CAFO, subject to the stipulated penalties provisions outlined herein.

### **VIII. REPORTING AND RECORDKEEPING**

38. Any reports required to be submitted by Respondent pursuant to the PCB Interim Measures Plan or otherwise shall be transmitted to Complainant by a responsible and authorized official of each Respondent, signed and certified as follows:

I certify under penalty of perjury that I have examined and am familiar with the information submitted in this document and all attachments, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information set forth in this document is true, accurate and complete. I am aware that there are significant penalties for submitting materially false information, including the possibility of fines and imprisonment.

39. The responsible official(s) of the Respondent shall send all communications or required reports concerning this CAFO to Complainant's Project Coordinator, who until further notice shall be:

Kimberly Tisa  
PCB Coordinator  
RCRA Corrective Action Section  
Mailcode OSRR07-2  
U.S. EPA, Region I  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

40. Respondent shall name a Project Coordinator and supply his or her name and contact information to Complainant within ten (10) days after the effective date of this CAFO. If the



Project Coordinator changes, Respondent shall provide new contact information to Complainant, in writing, within ten (10) days of the change.

41. *Document Retention:*

(a) Until at least seven years after all of Respondent's obligations under this CAFO have been met, Respondent shall retain all non-identical copies of all documents, records or other information (including documents, records, or other information in electronic form) in its possession or control, that relate in any manner to Respondent's performance of its obligations under this CAFO. This information-retention requirement shall apply regardless of any shorter retention period under institutional policies or procedures, or federal, state, or local law. At any time during this information-retention period, upon request by EPA, Respondent shall provide copies of any documents, records, or other information required to be maintained under this CAFO.

(b) Respondent shall notify EPA in writing thirty (30) days before destroying any documents, records or other information and give EPA the opportunity to take possession of any non-privileged documents.

(c) Respondent shall include a provision in all contracts relating to the activities described in the PCB Interim Measures Plan and CAFO that requires the contractor (i) preserve all documents, records, or other information relating to the contract during the course of the contract and provide such information within seven days of request by either Respondent or EPA; and (ii) deliver a copy of all documents, records, or other information relating to the contract to Respondent upon completion of the contract, at which point the contractor's record-keeping retention obligations under this CAFO would end. However, nothing in this

subparagraph is intended to limit EPA's information gathering authority under any statute.

#### **IX. STIPULATED PENALTIES**

42. If Respondent fails to comply with the record-retention requirements of Section VIII, Respondent shall be liable for a stipulated penalty of five thousand dollars (\$5,000). If Respondent fails to comply with any other term of this CAFO, including, but not limited to, the terms and conditions of the PCB Interim Measures Plan and documents submitted pursuant to the PCB Interim Measures Plan, Respondent shall be liable for stipulated penalties of: five hundred dollars (\$500) for each day that Respondent is in violation, and such violation occurs or continues for day one (1) through day thirty (30); one thousand five hundred fifty dollars (\$1,500) for each day Respondent is in violation, and such violation continues for day thirty-one (31) through day sixty (60); two thousand dollars (\$2,000) for each day Respondent is in violation, and such violation continues for day sixty-one (61) through day one hundred twenty (120); and three thousand hundred dollars (\$3,000) for each day Respondent is in violation, and such violation continues beyond day one hundred twenty one (121). A separate stipulated penalty shall apply and accrue for each provision of this CAFO that is violated.

43. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of completion of the activity.

44. Payment of stipulated penalties shall be made in accordance with Paragraph 49 within thirty (30) days of receipt of written demand by Complainant unless Complainant specifies a greater amount of time in its written demand.

45. Payment of stipulated penalties shall be in addition to any other relief available under federal law. Complainant may, in its sole discretion, decide not to seek stipulated penalties or to waive any portion of the stipulated penalties that accrue pursuant to this CAFO. If, upon receipt of the written demand, Respondent believes that the stipulated penalty is inappropriate, Respondent may invoke Dispute Resolution procedures of Section X. If Complainant agrees with Respondent's argument, Complainant may, in its sole discretion, reduce the amount of the written demand or withdraw it. Respondent shall pay any stipulated penalty subsequently assessed within ten (10) days of receiving Complainant's decision.

46. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, Complainant is entitled to assess interest and penalties on debts owed to the United States as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on stipulated penalties assessed pursuant to Paragraph 42 that have not been paid within the time specified by Complainant. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees in accordance with 31 C.F.R. § 901.9(c). In addition, a penalty charge of six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due in accordance with 31 C.F.R. § 901.9(d). Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day that payment is due.

47. All penalties, stipulated penalties, interest, and other charges shall represent penalties assessed by Complainant, and shall not be deductible for purposes of federal taxes.



48. Payment of any stipulated penalty, interest, or other charges does not waive, suspend, or modify the responsibility of Respondent to comply with the requirements of all of the federal laws and regulations administered by EPA and shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.

49. Payment of any stipulated penalty under this CAFO shall be made by a bank, cashier's or certified check made payable to the "Treasurer, United States of America." The check should also note the docket number of the Complaint (TSCA-01-2012-0036) and should be forwarded to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

In addition, Respondent should also forward notice of payment of the stipulated penalty as well as a copy of the payment check to the Regional Hearing Clerk and EPA's counsel at their respective mailing addresses below:

Catherine Smith, Esq.  
Senior Enforcement Counsel  
Office of Environmental Stewardship  
Mail code OES-04-4  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Mail Code ORA18-1  
Boston, MA 02109-3912

50. Failure to pay the amount in full within the time period demanded in the non-remittance order or written demand may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

#### **X. DISPUTE RESOLUTION**

51. The parties shall use their best efforts to informally and in good faith to resolve disputes and differences of opinion, which may arise concerning provisions of this Order. Notwithstanding the above, if Respondent disagrees, in whole or in part, with any decision made by Complainant pursuant to this Order with respect to the following: (1) rejection, modification or substitution of any component of the PCB Interim Measures Plan or document submitted pursuant to that plan; (2) a determination by Complainant to issue a Non-remittance Order pursuant to paragraph 35 of this CAFO; (3) a decision to modify the CAFO pursuant to paragraphs 57 or 58 below); or (4) a decision to demand stipulated penalties, Respondent shall notify Complainant in writing of such objections and the basis or bases for such objections within twenty (20) calendar days of receipt of EPA's disapproval, modification, decision, or directive. The notice shall set forth the specific points of the dispute, the position Respondent maintains, the basis or bases for Respondent's position, and any matters the Respondent considers necessary for Complainant's determination. Following Complainant's receipt of such written notice, Complainant will provide its decision in writing on the pending dispute, which decision shall be binding. The parties may continue to confer and to use informal efforts to resolve the dispute during the period that Complainant's final determination is pending.

## **XI. FORCE MAJEURE**

52. When circumstances caused by a Force Majeure event (as defined in paragraph 55 below) may delay or prevent the performance of any obligation under this CAFO, Respondent shall so notify Complainant in writing within ten (10) days after Respondent's knowledge of such circumstances. The written notice shall include the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measures taken and to be taken by Respondent to prevent or minimize the delay or correct the noncompliance, and the timetable for implementation of such measures. Upon request, Complainant may extend this 10-day time frame if, in Complainant's sole discretion, Complainant finds an extension to be appropriate.

53. If Complainant agrees that a delay or failure to perform an obligation under this CAFO is or was caused by a Force Majeure event, the time for performance of such obligations will be extended for such time as is necessary to complete those obligations, Complainant will notify Respondent in writing of the length of the extension, and stipulated penalties shall not accrue with respect to such obligations during the extended time for performance. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation.

54. If Complainant does not agree that a delay or failure to perform an obligation under this CAFO is or was caused by a Force Majeure event, or does not agree with Respondent on the length of the proposed extension of time due to the Force Majeure event, Complainant shall notify Respondent in writing of its decision and the basis therefore.



55. "Force Majeure," for purposes of this CAFO, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors, that delays or prevents the performance of any obligation under this CAFO despite Respondent's best efforts to fulfill the obligation. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, change of ownership of the Facility, failure to obtain federal, state, or local permits, or any other financial inability by Respondent to meet any obligation of this CAFO.

## **XII. MODIFICATION AND TERMINATION**

56. The terms of this CAFO may only be modified by written agreement of the parties and signature by the Legal Enforcement Manager, Office of Environmental Stewardship, EPA Region 1, except that the PCB Interim Measures Plan, enforceable documents submitted pursuant to the PCB Interim Measures Plan, and the deadlines contained therein (with the exception of the 15-year deadline to remove all PCB-contaminated window glazing compound and windows) may be modified by written agreement of Respondent and the Chief of the RCRA Corrective Action Unit, Office of Site Remediation and Restoration.

57. Within sixty (60) days of the effective date of any federal regulations that change how PCBs in caulk and/or window glazing compound are regulated, Respondent shall submit a proposal specifying if and how this agreement should be modified to comply with the new regulations. Complainant shall review such proposal and, either approve, reject, or modify the proposal in writing ("EPA's decision"). The parties shall subsequently amend the terms of this agreement in accordance with EPA's decision. Respondent shall be entitled to a CAFO

modification or termination if the new regulations make it legal to use PCBs in window glazing compound at the levels at which PCBs are found (pre-encapsulation) at the Facility.

58. The following additional provisions govern modification of the 15-year deadline to remove all PCB-contaminated window glazing compound and windows:

(a) Respondent shall be entitled to a meeting with EPA every five years from the effective date of the CAFO to discuss the reasonableness of the 15-year deadline, which may be affected by, among other things, (i) the success or failure of the interim measures; (ii) Respondent's finances; or (iii) the status of new regulations or science regarding PCBs in caulk and glazing.

(b) Respondent may propose, for EPA's approval, an extension to the 15-year schedule of up to five years for specific renovation projects that require procuring new space (including constructing new buildings) for functions that are currently in the Facility but that may not be allowed to continue in the Facility in the future due to building codes.

### **XIII. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS**

59. This CAFO constitutes a settlement by Complainant of all claims for civil penalties pursuant to Section 16 of TSCA for the specific violations alleged in paragraphs 14 through 18 of this CAFO, up to the date of issuance of this CAFO.

60. Respondent's obligations under this CAFO are severable. If a court of competent jurisdiction enters a final judgment holding invalid any material provisions of this CAFO, the remainder of Respondent's obligations under the CAFO shall remain in force and shall be fully enforceable.

61. Nothing in this CAFO shall prevent Complainant from taking any necessary action to

address conditions which may present an imminent and substantial endangerment to public health or the environment; nor shall this CAFO be construed to, nor is it intended to operate in any way to resolve any criminal liability or any other civil liability of Respondent.

62. Except as provided in paragraph 59, Complainant reserves its rights to bring enforcement actions against Respondent for alleged PCB violations under TSCA and any other applicable laws or regulations.

63. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA, the PCB regulations, and all other federal, state, and local laws, regulations, permits, or other requirements. However, this CAFO does provide an extended schedule for coming into compliance with the PCB regulations at the Facility.

64. Except as described in Paragraph 46, each party shall bear its own costs and fees in this proceeding.

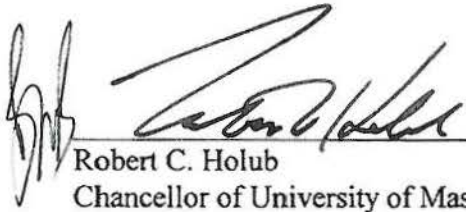
65. Pursuant to 40 C.F.R. 22.31(b), the effective date of this CAFO shall be the date when such document is filed with the Regional Hearing Clerk. After such filing, Complainant will notify Respondent of the effective date.

66. Each undersigned representative of a party to this CAFO certifies that she or he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to it.



THE UNDERSIGNED PARTY enters into this CAFO for In the Matter of: University of Massachusetts, TSCA-01-2012-0036

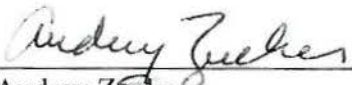
For University of Massachusetts:

  
Robert C. Holub  
Chancellor of University of Massachusetts Amherst

6/4/12  
Date

THE UNDERSIGNED PARTY enters into this CAFO for In the Matter of: University of Massachusetts, Docket No. TSCA-01-2012-0036

For U.S. EPA, Region 1:

  
\_\_\_\_\_  
Audrey Zucker  
Acting Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

  
\_\_\_\_\_  
Date

#### **XIV. FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date: June 20, 2012      LeAnn Jensen  
LeAnn Jensen  
Acting Regional Judicial Officer  
U.S. EPA, Region 1

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